IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/08/2003

CORAM

THE HON'BLE MR.JUSTICE P.K. MISRA

C.R.P.NPD.NO.1032 OF 2003
AND
C.M.P.NOs.10788 and 10789/2003

T. Janakiaraman .... Petitioner

-Vs-

1. The Revenue Divisional Officer &
Land Acquisition Officer,
Sathuvachari, Vellore-632 009

2. The Divisional Engineer,
National Highways,
Sankaranpalayam,
Vellore 632 001 .... Respondents

The Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the order and decretal order passed in I.A.No.34 of 2002 in L.A.O.P.No.11 of 2001 dated 28.4.2003 on the file of Subordinate Judge of North Arcot at Vellore.

!For petitioner : Mr.M.S. Mani

^For respondent : Mr.M.C. Swamy
Spl.Govt. Pleader

:ORDER

Heard Mr.M.S. Mani, learned counsel for the petitioner and Mr.M.C. Swamy, learned Special Government Pleader (Civil Side).

2. The present revision petition has been filed by the decree holder. The matter arises out of Land Acquisition Proceedings in L.A.O.P.No.11/2001. The decree passed in the said L.A.O.P was challenged in the High Court by the present respondent and the said appeal was dismissed by this Court on 27.3.2003 in A.S.No.168/2003.

3. During the pendency of the matter in the High Court, the present petitioner had filed E.P.No.68/2003. In the said Execution Petition, certain

amount had been deposited by the respondent and at that stage, an application was filed by the present petitioner for withdrawal of the amount. The following order was passed:

ORDER

"Petitioner filed this petition to pass an order of payment out for a sum of Rs.11,27,283/- now lying in court deposit to the credit of the above LAOP No.11/2001 by issue of a cheque in favour of the petitioner namely.

Both sides Heard. A.S.No.168/2003 has been posted of by Honourable High Court on 27.3.2003 G.P. has filed memo stating that final opinion of G.P. Chennai is awaited any how G.P represented that 50% amount may be given. Hence cheque for Rs.5,00,000/- ordered to be issued in favour of petitioner T. Janakiraman's counsel Mr.M.S. Mani on verifying treasury statement on furnishing security memo filed & recorded".

4. The aforesaid order has been challenged by the present petitioner.

5. It is contended by the learned counsel for the petitioner that since the appeal in the High Court had been disposed of on 27.3.2003, there was no justification for the executing Court to direct withdrawal of 50% of the deposited amount. It is further submitted that at any rate, there is no justification for the Court to direct the present petitioner to furnish security. It is the contention of the petitioner that the amendment effected by the State Government relating to withdrawal of deposits made in Land Acquisition case has been quashed by the High Court in the case of Rajasheriff vs The Government of Tamil Nadu rep by Secretart Law Department, Fort St.George, Chennai-9 (2001 (4) CTC 577 and in such view of the matter, the executing Court has no justification to permit withdrawal of only 50% and that too on furnishing of security. Since the matter has been finalised in the High Court, it is the duty of the executing Court to enable the decree holder to obtain the amount from the respondent.

6. The learned counsel for the respondent submitted that even though the appeal has been decided by the High Court, there is every possibility of the respondent challenging such judgment in the Supreme Court and therefore the order passed by the executing Court cannot be said to be illegal, as such order has been passed with a view to protect the interest of the respondent.

7. In my opinion, such submission of the learned counsel for the respondent cannot be accepted. Once the decree has been passed, the executing Court, in the absence of any stay from the appellate authority, cannot impose conditions, which are not warranted under law. The amendment having been quashed, it must be taken that there is no provision enabling the executing Court to withhold any amount. Therefore, the entire amount which has been deposited, should be permitted to be withdrawn by the petitioner and security need not be furnished. It is however, made clear that if, in the meantime, there is any stay order passed by any competent appellate authority, such order has to be complied with.

8. In the aforesaid view, the revision petition is allowed and the impugned order is set aside. Consequently, the connected C.M.Ps are closed. No costs.

Index: Yes
Web site:Yes
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To
The Subordinate Judge of North Arcot at Vellore.